



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH
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December 15, 2004

TO: Washington State Board of Health Members
FROM: Craig McLaughlin, Board Staff
RE: **PREVIEW OF 2005 LEGISLATIVE SESSION**

Background and Summary

The purpose of this agenda item is to provide a very preliminary briefing to the Board about the upcoming legislative session, a full or “long” session that will convene January 10. It is intended to provide some context for the next agenda item, an initial review and discussion of a document that would provide a policy framework for legislative relations during session. The Board will be asked to approve a version of that “sense of the Board” document in January. Staff from the Board and the Department of Health (DOH) will update the Board on legislative issues throughout the session, and Board staff will maintain a Web page about bills on which the Board has taken a position.

I have asked Chris Townley, acting director of the DOH Office of Policy, Legislation and Consistent Relations to join me for this presentation.

This discussion section of document lists issues related to public health and the Board’s authority that are likely to spawn discussion and legislation during the upcoming session. Information changes quickly before and during session; this document represents the best information available to Board staff as of December 9. The content of this memo is, of necessity, highly speculative.

Much is still up in the air about this session. In particular, while Dino Rossi is governor-elect, his lead is only 42 votes and a hand recount is underway. Results of the recount are not likely to be available before Dec. 23 and court action could follow. Also, Governor Locke’s budget is not due out until next week (the deadline is Dec. 20, although parts of it are likely to be available before then). We do know that this will be another difficult budget year. The projected shortfall for the biennium—the difference between projected revenue and the projected costs of continuing to provide the same level of service given anticipated caseload increases—is \$1.6 billion. We also know that the Democrats have a slight majority in both houses of the Legislature. There are six new members of the Senate, four of whom were previously in the House. There are 19 new members in the House. Moreover, there are several fresh faces in leadership positions in both houses. For example, Senator Karen Kaiser will chair the Senate Health & Long-Term Care committee, rather than Senator Pat Thibaudeau, past chair and the senior Democrat.

Recommended Board Action

None.

Discussion

DOH request legislation: Ms. Townley can discuss request legislation and decision packages proposed by DOH, but there are two items of particular note for the Board's work.

- DOH has proposed agency request legislation that would amend a law passed in 2003 that requires DOH to develop a state plan for the management and prevention of hepatitis C. The plan was delivered to the Legislature in January 2004. The legislation, SSB 5039, said only federal or private money could be used to develop and implement the plan before 2007. The DOH request legislation is so DOH potentially could receive state dollars to help implement the plan before 2007. The Board has already implemented one recommendation of this plan by adding hepatitis C to the list of conditions that laboratories must report. The Office of Financial Management has not authorized the proposed legislation.
- The DOH budget request includes a \$1.2 million decision package around small on-site sewage systems (SOSS) that anticipates Board adoption of a new SOSS rule that would require a written county plans for operation and maintenance. The department is requesting additional funding to local health jurisdictions (LHJs) serving the 14 marine counties and to provide to provide technical assistance to all LHJs on rule implementation. The proposal is an outgrowth of the Priorities of Government (POG) discussion around SOSS. Although it is not specifically mentioned in the decision package, the POG group envisioned a meeting or conference, possibly sponsored by the Board, to bring together local planners and public health officials to discussion possible solutions to OSS problems. It is not known whether this will be included in the Governor's budget.
- DOH has proposed, and OFM has approved agency request legislation that would authorize DOH to use the "specialty clinic fee" created in 1999 to provide critical health services to children diagnosed with the five new disorders that the Board added to the newborn screening rule in 2003. RCW 70.83.020 specifies the disorders the fee can be used for and lists only the disorders that were on the screening panel in 1999.

Public health funding: For the past few years, public health has stressed the need for stable and secure funding. State funding for public health is down 10 percent over 10 years and county contributions are dwindling rapidly. Preliminary estimates from the Public Health Improvement Partnership (PHIP) are that something on the order of an additional \$400 million would be needed for the public health system to achieve 95 percent compliance with the PHIP standards. That would be an increase of roughly two-thirds over current spending. Given the projected budget shortfall, it is unlikely that the Legislature would address the gap in a significant way this session. However, public health and its allies in the Public Health Roundtable (convened by the Washington State Public Health Association) will be educating lawmakers on the system's funding needs. There may be efforts to provide some interim relief—the Washington State Association of Counties is considering a proposal to add about \$10 million—and there may be a call of an legislative study, perhaps by the Joint Audit and Review Committee, to verify the PHIP findings.

Environmental health: There are several environmental health issues that the Legislature is likely to take up.

- There are expected to be several bills on the regulation of **onsite septic systems**. The POG process looked at this issue extensively but at this time no Governor request legislation is anticipated. Legislation may be introduced by builders, homeowners, or environmental groups, some of which could seek to either limit or expand the Board's authority. The

building industry, for example, might seek legislation allowing septic systems on smaller lots. The environmental community has made OSS one of its top legislative priorities and is likely to proposed legislation that would incorporate elements of the draft rule into statute and would strengthen the shellfish protection district statute to require funding under certain circumstances. There also may be legislation to help fund repairs to onsite systems near marine shorelines, perhaps through a revolving low-interest loan fund.

- Last session, Senator Jacobsen introduced legislation to require testing of **school drinking water** for lead and other contaminants. The bill did not pass but interest in the issue has only grown in the interim. More comprehensive legislation may be introduced this session.
- The Board regulates the **disposal of dead animals** under its general authorities related to sanitation and deceased remains. The Department of Agriculture also regulates the disposal of deceased farm animals. The Board's rules and Agriculture's rule are not consistent and concerns were raised after the discovery of a case of "mad cow" in the state a year ago. Last session, the Legislature requested a report from Agriculture. There may be an effort to consolidate authority to write rules in this area, most likely with Agriculture.
- The Board has held several discussions on **persistent bioaccumulative toxins** (PBTs) and has supported the Department of Ecology's previous efforts to obtain legislative support for its PBT program. The Board specifically supported Ecology's and DOH's Mercury Action Plan. Ecology and DOH, at the request of the Governor, have been developing an action plan for polybrominated diphenyl ether (PBDE), a flame retardant. There is certain to be legislation to ban two forms of PBDE, penta-BDE and octo-BDE, but there has been discussions about whether to ban deca-BDE as well. Its toxicity to humans is not as well understood. The legislation could come from the Governor or from environmental groups.

Communicable disease: The most likely area where we would see communicable disease legislation would be around HIV/AIDS. There could also be legislation or budget proposals related to hepatitis C in addition to the DOH decision package (see above). Vaccine policy may also come up.

- The successful Thurston County prosecution of a man who knowingly exposed several women to the HIV virus has received extensive publicity. This may encourage legislation that affects the Board's rules around "**behaviors endangering**" and "behaviors presenting imminent danger to public health." The HIV Collaborative, which the Board co-convened with DOH, is looking at options so it could respond to any proposed legislation.
- The members of the HIV Collaborative may propose legislation that would allow a health officer to order that a person or his or her remains be tested for HIV or other bloodborne infections when a "**Good Samaritan**" is exposed to bodily fluids at the scene of an accident. Currently, this is only offered to people exposed during the course of employment (e.g., paramedics).
- Several are several **vaccine policy** issues the Legislature may take up. Legislation may be introduced to ban state purchase of vaccines containing thimerosal, a preservative that contains ethylmercury. Thimerosal is not currently used in licensed vaccines regularly recommended for school-age children (though it may appear in trace amounts). It is used in some influenza vaccines. Such legislation was introduced last year but not pursued. Other jurisdictions have since banned thimerosal. The House Health Care Committee has also expressed an interest in raising the state's low immunization rate. One way to do this would

be to make it less easy for parents to exempt their children from school-entry requirements. There also could be efforts aimed at requiring school and child care children to be immunized against varicella (chickenpox), to cover or require combination vaccines, and even to revisit the state's universal distribution policy.

Physical activity and nutrition: Last session saw several bills related to physical activity and nutrition in school. The one that passed, SB 5436, required the Washington State School Director's Association to take the lead in developing a model policy. The Board participated in this process. By August, districts must adopt their own policies. There are likely to be efforts to build on SB 5436 this session, as well as other efforts to address the obesity epidemic.

- There may be efforts to establish specific minimum standards for the district physical activity and nutrition policies required by SB 5436.
- A bill introduced last year by Senator Rosa Franklin would have required that physical activity issues be considered when doing **land use** planning, including community development and transportation planning. It would have given the Board broad authority to write rules around physical activity and nutrition. Senator Franklin is expected to reintroduce a form of that bill.
- DOH, Action for Health Kids, the American Heart Association of Washington, and the Washington Cancer Society have convened a leadership group on nutrition and physical activity. The group will attempt to prioritizing possible long-term interventions, but it is also exploring whether the participants might be able to reach consensus on legislative priorities for this session. I am representing the Board on this group.

Access to care: Governor Locke has stated that perhaps 40,000 low-income adults could lose coverage under the Basic Health Plan unless the state enacts a tax increase. This has heightened concerns about access to care.

- **Budget legislation** will determine levels of coverage under state-run insurance programs, namely Medical Assistance (including SCHIP) and Basic Health. Locke may suggest cuts that reduce the number of Basic Health enrollees to 60,000—down from 135,000 two years ago.
- The budget legislation will determine not only who gets coverage but how much coverage they receive and under what terms. The 2003-05 budget required premium shares and copayments for some enrollees, and required re-certification every six months. The Governor temporarily suspended some of these requirements. Some 47,000 children in Washington have dropped of the insurance since April 2003. Advocates say this is largely due to **administrative barriers**. There will be attempts to restore 12-month certification, simplify income verification procedures, and make it easier for children to retain coverage when family income fluctuates.
- Last year, the Legislature removed many **mandated benefits**, including benefits for proven public health interventions, from laws governing small business insurance. There may be other attempts to roll back mandated benefits.
- Rep. Eileen Cody has said she will reintroduce “**play or pay**” legislation that would require that employers with 50 or more employees either provide health insurance or pay money into Basic Health.

- In recent years, the Board has written letters of support for **mental health** parity legislation that sought to extend insurance to cover mental illness. Each year it has come closer to passage. There appears to be growing interest this year. There is also growing recognition that the mental health infrastructure—particularly the “safety net”—is in crisis. The Legislature has formed a Joint Legislative and Executive Task Force on Mental Health Services and Financing.
- We expect continued legislative efforts to address problems with access to **dental care**, especially for children.

School health: School health has been an area of strong legislative interest in recent years and there may be legislation again this year.

- See above for a discussion of **physical activity and nutrition** in schools
- The American Lung Association of Washington is expected to introduce “asthma friendly schools” legislation that would, among other things, include provisions related to **school indoor air quality**. It would require that school employees receive in-service training for on symptoms, treatment and monitoring of students with asthma, and would mandate that school districts to adopt policies on asthma rescue procedures and asthma prevention. The group also is considering legislation that would require the state to develop an asthma plan.
- There may be legislative efforts to address Washington’s poor **school retention** rate. There is a strong correlation between lifelong health and the level of education attained.

Health disparities: Last session the Legislature established a Joint Select Committee on Health Disparities, which must issue a report by December 2005. The POG process also examined health disparities. At this time, we are not aware of any health disparities legislation that is likely to be introduced for this session.

Tort reform: Medical malpractice reform will continue to be a major issue before the Legislature. Last year, the Washington State Medical Association’s proposed a \$250,000 cap on non-economic damages. The Governor has proposed an alternative that focused on patient safety initiatives. Only part of the Governor’s package passed. Initiative to the Legislature are being sponsored this year by both by the trial bar (Initiative 336) and by physicians (I-330).

Tobacco: There will be continued efforts to extend the Clean Indoor Air Act ban on indoor smoking in public places. There are also likely to be efforts to reduce youth access to tobacco.

Sex education: Last session, legislators asked DOH and the Office of Superintendent of Public Instruction (OSPI) to develop program guidelines for sex education in the schools. Legislation might be introduced that would incorporate these guidelines into statute.